IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No. 1941 of 1983
Date of Decision : 17.10.2007

Karnail Kaur & Anr.

..... Appellants

Versus

Balbir Singh & Anr.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.J.R. Mittal, Sr. Advocate with
Mr. Kashmir Singh, advocate
for the appellants.

None for the respondents.

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VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgment and decree passed by the learned lower appellate Court vide which appeal filed by the defendant appellants was partly allowed and the judgment and decree passed by the learned trial Court in respect of 122K-14M of land as detailed in para 8 of the trial Court judgment was upheld. The suit of the plaintiff with respect to the remaining suit land was ordered to be dismissed.

The plaintiff brought a suit for permanent injunction by claiming that he was in possession of suit land measuring 202K-8M as tenant. In the suit Katora Singh, Karnail Kaur and Bhan Kaur were impleaded as defendants. It was claimed that he be not dispossessed forcibly from the land in dispute. The suit was brought on the plea that the suit land was owned by Kishan Kaur, Parsin Kaur, Katora Singh and others and the plaintiff was in possession of the suit land as tenant for the last 17/18 years. The suit was contested by Katora Singh, Karnail Kaur and Bhan Kaur, who

denied the possession of the plaintiff over the suit land. It was claimed that co-sharers have got the land partitioned and specific khasra numbers have fallen to their respective shares. They also claimed that possession of the land was of the co-sharers and the plaintiff Balbir Singh who was husband of Parsin Kaur, a cosharer wants to interfere in the change of possession.

After filing of the replication, the learned trial Court was pleased to frame the following issues :-

1. Whether the plaintiff is in possession as tenant ? OPP
2. Whether the plaintiff is entitled to injunction as prayed for ? OPP
3. Relief.

The learned trial Court by placing reliance on Ex.P-1 Jamabandi for the year 1976-77 came to the conclusion that the plaintiff had proved his possession over the land in dispute for the last 18/19 years. The said documentary evidence stood corroborated by oral evidence, the evidence produced by the defendant-appellants was not reliable as no reliance could be placed on the entries of the Khasra/girdawari in view of the entries in the jamabandi.

The learned trial Court also noticed that Bhagwan Kaur, who was defendant partly admitted the possession of the plaintiff Balbir Singh. Therefore, the learned trial Court in view of the admission of Bhagwan Kaur decided issue No.1 in favour of the plaintiff.

On issue No.2, the learned trial Court recorded a finding that the plaintiff was only entitled to injunction to protect his possession but could not interfere with the partition proceedings. Accordingly, the suit was decreed.

The learned lower appellate Court came to the conclusion that the documentary evidence by way of jamabandi produced on record did not prove the possession of the plaintiff respondent to be that of a tenant. The learned lower appellate Court on appreciation of documentary evidence, thus, came to the conclusion that possession of Balbir Singh plaintiff over land measuring 122K-14M was duly established but the said possession could not be said to be as that of a tenant. In view of this finding, the finding on issue No.1 was modified and it was held that the plaintiff has been able to prove his possession with respect to 122K-14M of the land only. With this modification the injunction was modified and the suit was partly decreed restraining defendant appellants from interfering in the possession of the plaintiff forcibly except in due course of law.

In this appeal no substantial question of law has been framed. However, the learned counsel appearing on behalf of the appellants contends that the following substantial question of law arises for consideration in this appeal :-

> As to whether the judgments and decrees passed by the learned Courts below were outcome of misreading of evidence on record therefore being perverse is liable to be set aside ?

In support of the substantial question of law, the learned counsel for the appellants contends that the learned lower appellate Court was wrong in coming to the conclusion that the possession of the plaintiff was proved , rather the plaintiff had proved his possession over the suit land and, therefore, the substantial question of law as framed deserves to be answered in favour of the appellants. This contention of the learned counsel for the appellants cannot be accepted. The learned Courts below have

recorded a positive finding that possession of the plaintiff over the land measuring 122K-14M only on the basis of revenue record produced on record as well as the admission made by Bhagwan Kaur defendant in her statement stood proved.

It cannot be said that the finding recorded by the learned lower appellate Court is outcome of misreading of evidence produced on record or perverse as is sought to be pleaded. Therefore, the substantial question of law as framed is answered against the appellant and appeal is dismissed being devoid of merit.

17.10.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**